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Security Council

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Letter dated 22 December 2000 from the President of the Security Council addressed to the Secretary-General

The members of the Security Council have carefully reviewed your report of 4 October 2000 on the establishment of a Special Court for Sierra Leone (S/2000/915). The Council members wish to convey their deep appreciation for the observations and recommendations set forth in your report.

The members of the Security Council reaffirm their support for resolution 1315 (2000) and its reiteration that the situation in Sierra Leone constitutes a threat to international peace and security. With the objective of conforming to resolution 1315 (2000) and related concerns, and subject to the agreement of the Government of Sierra Leone as necessary and appropriate, the members of the Council suggest that the draft Agreement between the United Nations and the Government of Sierra Leone and the proposed Statute of the Court be amended to incorporate the views set forth below.

1. *Personal jurisdiction.* The members of the Security Council continue to hold the view, as expressed in resolution 1315 (2000), that the Special Court for Sierra Leone should have personal jurisdiction over persons who bear the greatest responsibility for the commission of crimes, including crimes against humanity, war crimes and other serious violations of international humanitarian law, as well as crimes under relevant Sierra Leonean law committed within the territory of Sierra Leone. The members of the Security Council believe that, by thus limiting the focus of the Special Court to those who played a leadership role, the simpler and more general formulations suggested in the appended draft will be appropriate. It is the view of the members of the Council that the Truth and Reconciliation Commission will have a major role to play in the case of juvenile offenders, and the members of the Security Council encourage the Government of Sierra Leone and the United Nations to develop suitable institutions, including specific provisions related to children, to this end. The members of the Security Council believe that it is the responsibility of Member States who have sent peacekeepers to Sierra Leone to investigate and prosecute any crimes they may have allegedly committed. Given the circumstances of the situation in Sierra Leone, the Special Court would have jurisdiction over those crimes only if the Security Council considers that the Member State is not discharging that responsibility. Therefore, Council members propose the inclusion of language in the Agreement to be concluded between the United Nations and the Government of Sierra Leone and in the Statute of the Special Court to that effect.

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2. *Funding.* Pursuant to resolution 1315 (2000), members of the Security Council support the creation of a Special Court for Sierra Leone funded through voluntary contributions. Such contributions shall take the form of funds, equipment and services, including the offer of expert personnel that may be needed from States, intergovernmental organizations and non-governmental organizations. It is understood that you cannot be expected to create any institution for which you do not have adequate funds in hand for at least 12 months and pledges to cover anticipated expenses for a second year of the Court's operation.

In order to assist the Court on questions of funding and administration, it is suggested that the arrangements between the Government of Sierra Leone and the United Nations provide for a management or oversight committee which could include representatives of Sierra Leone, the Secretary-General of the United Nations, the Court and interested voluntary contributors. The management committee would assist the court in obtaining adequate funding, provide advice on matters of Court administration and be available as appropriate to consult on other non-judicial matters.

3. *Court size.* The members of the Security Council do not believe the creation of two Trial Chambers and the use of alternate judges as proposed in your report is necessary, at least not from the very outset. The Special Court should begin its work with a single Trial Chamber, with the possibility of adding a second Chamber should the developing caseload warrant its creation. Council members also question the provision in the draft Agreement and Statute calling for alternate judges. It should be noted in this connection that neither the International Tribunal for the Former Yugoslavia nor the International Criminal Tribunal for Rwanda employs alternate judges.

The members suggest the following further adjustments of a technical or drafting nature to the Agreement: Add an express provision to article 13 as a new subparagraph (d) under paragraph 2, concerning immigration restrictions; to article 14 concerning witnesses and experts; and to article 4 (c) of the Statute of the Court, modifying it so as to conform it to the statement of the law existing in 1996 and as currently accepted by the international community.

The members of the Security Council express their hope that you will concur with the proposals outlined above and adjust the draft Agreement between the United Nations and the Government of Sierra Leone and the Statute of the Court as expeditiously as possible, along the above lines and as indicated in the attached annex.

(*Signed*) Sergey **Lavrov**
President of the Security Council

Annex

In consequence of the comments contained in the letter, it is suggested that consideration be given to adjustment of the "Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone" and the "Statute of the Special Court for Sierra Leone".

Agreement

Preamble

No change.

Article 1
Establishment of the Special Court

1. There is hereby established a Special Court for Sierra Leone to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.

2. The Special Court shall function in accordance with the Statute of the Special Court for Sierra Leone. The Statute is annexed to this Agreement and forms an integral part thereof.

Article 2
Composition of the Special Court and appointment of judges

1. The Special Court shall be composed of a Trial Chamber and an Appeals Chamber with a second Trial Chamber to be created if, after the passage of at least six (6) months from the commencement of the functioning of the Special Court the Secretary-General, the Prosecutor or the President of the Special Court so request. Up to two alternate judges shall similarly be appointed after six months if the President of the Special Court so determines.

2. The Chambers shall be composed of no fewer than eight (8) independent judges and no more than eleven (11) such judges who shall serve as follows:

(a) Three judges shall serve in the Trial Chamber where one shall be appointed by the Government of Sierra Leone and two judges appointed by the Secretary-General, upon nominations forwarded by States and in particular the Member States ...

(b) In the event of the creation of a second Trial Chamber, that Chamber shall be likewise composed in the manner contained in subparagraph (a) above;

(c) Former paragraph 2 (b).

3. *No change.*

4. *No change.*

5. If an alternate judge or judges have been appointed, in addition ...

Article 3

No change.

Articles 4 and 5

No change.

Article 6
Expenses of the Special Court

The expenses of the Court shall be borne by voluntary contributions from the international community. It is understood that the Secretary-General will commence the process of establishing the Court when he has sufficient contributions in hand to finance the establishment of the Court and 12 months of its operations plus pledges equal to the anticipated expenses of the second 12 months of the Court's operation. It is further understood that the Secretary-General will continue to seek contributions equal to the anticipated expenses of the Court beyond its first 24 months of operation. Should voluntary contributions be insufficient for the Court to implement its mandate, the Secretary-General and the Security Council shall explore alternate means of financing the Court.

Articles 7 to 12

No change.

Article 13

New paragraph 2 (d)

Immunity from any immigration restrictions during his or her stay as well as during his/her journey to the Court and back.

Article 14

... The provisions of article 13, paragraph 2 (a) and (d), shall apply to them.

Articles 15 to 20

No change.

Statute

Preamble

No change.

Article 1
Competence of the Special Court

(a) The Special Court shall, except as provided in subparagraph (b), have the power to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who,

in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone.

(b) Any transgressions by peacekeepers and related personnel present in Sierra Leone pursuant to the Status of Mission Agreement in force between the United Nations and the Government of Sierra Leone or agreements between Sierra Leone and other Governments or regional organizations, or, in the absence of such agreement, provided that the peacekeeping operations were undertaken with the consent of the Government of Sierra Leone, shall be within the primary jurisdiction of the sending State.

(c) In the event the sending State is unwilling or unable genuinely to carry out an investigation or prosecution, the Court may, if authorized by the Security Council on the proposal of any State, exercise jurisdiction over such persons.

Articles 2 and 3

No change.

Article 4

... (as is)

(c) Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.

Articles 5 and 6

No change.

Article 7

Should any person who was at the time of the alleged commission of the crime below 18 years of age come before the Court, he or she shall be treated with dignity and a sense of worth, taking into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society, and in accordance with international human rights standards, in particular the rights of the child.

Articles 8 to 10

No change.

Article 11

(a) The Chamber, comprising one or more Trial Chambers and an Appeals Chamber;

Article 12

1. The Chamber shall be composed of not less than eight (8) or more than eleven (11) independent judges, who shall serve as follows:

[*consequential changes in paras. 1 (a) and 4*]